

THE LAW

RELATING TO

# Lost Logs and Lumber

Carried Down the River Susquehanna

By the Flood of June, 1889.

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Opinion of Rockefeller, P. J., filed August 8, 1889, in awarding an Injunction to restrain the owners of shore and island lands and log-catchers from interfering with the employees of The West Branch Lumberman's Exchange in retaking lost logs and lumber in Northumberland County.



# In the Court of Common Pleas OF NORTHUMBERLAND COUNTY.

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No.            IN EQUITY.

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THE WEST BRANCH LUMBERMAN'S EXCHANGE,

*Plaintiff,*

*VS.*

John Enterline, John Noriconk, Henry Hummel, Frank P. Waldron, Frank B. Ryne, C. H. Cooke, Wm. L. Nesbit, J. B. Henderson, Thomas Croft, Henry Nesbit and E. J. Nesbit, his wife, Solomon Fairchild, Nicholas Ernst, David Whitmire, Samuel Schnure, George Walter, Lewis Snyder, Nicholas Phillips, Vastine Leighou, George Roberts, James Whitmer, Thomas J. Stamm, John C. Chesney, Charles Jones, Andrew Renninger, Hiram Ruch, T. L. Johnson, E. C. Chesney, Wm. P. Leisenring, Morris Eckert, John Ulp, E. K. Bright, Jacob Philman, D. L. Starick, George DeMuth, William Alen. George Young, James Renninger, Robert Scott, Ira Johnson, Howard Clark, Jack Bardell, Herbert Stannart, Jacob Renner, Jacob Goodyear, George Krebs, Chas. Meyers, T. M. Garihan, Daniel Wertman, Charles Nesbit, Jacob Hendricks, Solomon Williard, Charles Leshner, Joseph DeMuth, William Ray, John Zimmerman, George P. Krohn, George Kiehl, J. W. Lyon, Isaiah Casatt, Allan Hopper, George Bucher, Samuel Krohn, Henry J. Bucher, M. A. Keiffer, James Russel, Charles Mantz, William Steece, Landis Stroh, Benjamin Silverwood, Alexander Casatt, George A. Reeser, John Hopper, John Fisher, Frederick Haughton, Joseph Hammer, Charles Harp, Henry Schure, C. Mantz, George Hoover, Abel Herrold, John Downey, Carrie A. Barrett, George W. Sterner, Silas Kramer, John Buyers, John Fry, George P. Fisher, Mrs. Susan Fisher, R. C. Fess, Ag't, E. T. Hettrick, T. J. Hettrick, Percival Keyser, E. R. Gemberling, H. M. Silverwood, Daniel Trutt, Edgar Fisher, Jas. Kessler, Marion Greiner, Zachariah Keller, Adam Greiner, P. A. Keiser, William Keiser, Benjamin Costley, Victor Koble, Newton W. Snyder, Airsman J. Seiler, John R. Kauffman, Harris Buyers, William Rothermel, John Cauvel, John Alleman, Charles B. Zerbe, John H. Seagrist, David Walt, Thomas Zerbe, Philip Enders, Abraham Adams, Alonzo Arbogast, James H. Lemon, Levi Kauffman, Warren W. Smith, Ambrose Zerbe, Michael Wentz, Jacob Shroyer, C. C. Bingeman, William H. Duttery, William H. High, George Aumiller, Joseph Latchford, Isaac Kebach, J. W. Betleyon, William H. Moyer, W. C. Bubb, Emanuel Radel, Emanuel Klinger, D. R. Walt, William Rothermel, William Michael, John Lahr, Isaac Lahr, William Treiblebeis, Ira Clement, C. T. Kamp, Isaiah Anderson, William Boardman, Henry Carl, Jeremiah Wolf, Henry Grubb, Isaac Albert, Jacob B. Bohner, Edward Zeigler, Peter Zeigler, C. M. Brown, Elmer Zeigler, J. A. Koble, Christian Cover, Monroe Zeigler, Willoughby Walt, Adam Gotshall, Leader and Koble, Fred Seaman, Charles Renninger, George Werling, Albert Johnson, Richard Shaw, I. H. Ressler, J. W. Wagner, Frank Fenstermacher, Ben Dreiblebeis, M. M. Neagly, Felix Fetterolf, Jacob Shaffer,

*Defendants.*



*To the Honorable William M. Rockefeller, President Judge of the Court of Common Pleas of Northumberland County, sitting in Equity.*

Your orator complains and says:—

FIRST. That it is a corporation duly chartered under an Act of the General Assembly of the state of Pennsylvania, approved March 23, 1873, and has its principal place of business in the City of Williamsport; and that the defendants are residents of the said County of Northumberland, or owners of lands therein.

SECOND. That before the month of June, A. D., 1889, a large number of persons, firms and companies (for the most part members of the plaintiff corporation) engaged in lumbering, manufacturing and dealing in timber and lumber, in and along the West Branch of the river Susquehanna and its tributaries, were the owners severally of large stores of logs and lumber, the merchandising and trafficking wherein constituted the principal industry of the cities of Williamsport and Lock Haven and of the valley of the West Branch north of the said City of Williamsport, giving employment to large numbers of men and keeping in operation large saw mills and manufactories; that the logs so in stock were gathered in booms in the said West Branch at and above Williamsport, established for that purpose by authority of law, and there securely held for the use of the individual owners and, though mingled together, known by their respective marks or brands which are duly registered; that the sawed lumber and lumber prepared for market, in stock as aforesaid, sawed from the registered logs, was gathered, stored and piled in lumber yards at and about the mills and factories of the respective owners; that with the said stock the respective owners were prosperously dealing, and by industry,

had every reason to hope that their investments in such logs and lumber would prove remunerative, besides continuing in employment the large number of men aforesaid.

THIRD. That in consequence of extraordinary rain-falls and tempests, on or about the first day of June, 1889, the waters of the West Branch and its tributary streams increased and swelled beyond high water-mark, so that the West Branch of the Susquehanna river, at the Cities of Lock Haven and Williamsport reached a height never before attained; and by reason of the great height of the said waters and the great velocity and pressure thereof, the said booms securing the logs aforesaid were forced and broken, and the said lumber yards were inundated so that the lumber prepared for market was lifted up and borne upon the current; and thereupon the whole of said stocks of logs and lumber were carried away upon the waters of the West Branch and the main river Susquehanna in one confused mass.

FOURTH. That there thus passed out of the immediate possession and control of the said owners, about Two Hundred and Fifty Millions of feet of lumber in the logs and about Fifty Millions of feet of sawed and merchantable lumber, valued in all at above Four Millions of Dollars, and the said valuable stocks were mixed, scattered and strewn along the shores and upon the islands of the said West Branch and main river Susquehanna, from the City of Williamsport to the Chesapeake Bay, a distance of one hundred and eighty miles.

FIFTH. That, in the passage of the said mass of logs and lumber upon the said flood, through the county of Northumberland, large quantities thereof (about Forty Millions of feet) were stranded and lodged upon lands adjacent to the



said river and upon islands therein, and some logs and lumber (about Two Millions of feet) were captured by men and boys who secured the same along the shore ;—the defendants named herein are persons who own or occupy shore and island lands in said County whereon said logs and lumber were stranded and also persons who captured and secured logs and lumber as aforesaid.

SIXTH. That the owners of the said logs and lumber, in order that they might save as much out of the wreck as possible and that their said property might be retaken, gathered up, sold and marketed, authorized and empowered, by writings duly executed by them severally and delivered to the said plaintiff (a copy whereof is hereunto attached) the said plaintiff in its own name and by its agents and employees to gather, retake, sell and dispose of all of the said logs and lumber, to pay out of the proceeds thereof all the necessary cost and expenses in retaking, gathering and marketing the said logs and lumber, and all legal demands upon the same, and to hold the balance in trust for the respective owners in proportion to their respective ownership in the said mass.

SEVENTH. That in pursuance of the said power and authority the said plaintiff proceeded as speedily as possible and entered into large and important contracts for the gathering of said lumber and logs and for their transportation to Williamsport, and, at great expense, and after great labor, secured and put upon and along said river sufficient forces of men and sufficient machinery to ensure the speedy return of all such logs and lumber to the mills at Williamsport for the purpose aforesaid.

EIGHTH. That, although the necessities of the premises require the contractors, agents and employees, of the plaintiff to proceed promptly and uninterruptedly in the said work of gathering the said logs and lumber, as well in order that time and expense may be saved as that the said property may be preserved from further exposure and depreciation in value; and that, although the said plaintiff has the right of property in the said logs and lumber, and the right to the immediate possession thereof, yet so it is that the said defendants, upon one pretext and another, have retained the said logs and lumber upon their ground where the same stranded and were lodged, or upon the public shores of the river and in the waters thereof where they have secured the same, and have refused to permit the said agents and employees of the plaintiff to remove the same, or to enter upon their lands to retake the same, and have threatened the plaintiff's agents and employees with legal processes and arrests and with bodily injuries should they exercise the right to retake and remove said lumber and logs; whereby it happens that the plaintiff is vexed and annoyed with great and unnecessary expenses, costs and damages, and, if driven to seek legal remedies, will suffer irreparable loss and injurious delay by multiplicity of suits, etc.

NINTH. That the plaintiff has made fair offers to the defendants to compromise all controversies and disputes; agreeing to make money payments, in order that the said work should not be delayed, or to give bonds to said defendants with sufficient sureties, and upon such reasonable conditions as the defendants should propose, to secure to them the payment of any judgment or judgments they might severally recover at law respecting the stranding or capture of said logs and lumber, or to make a case or cases stated for the opinion of the court as to the amount or amounts which



the plaintiff would be liable to pay, if anything, to said defendants respecting the possession of said logs and lumber, or the capture, or taking up of the same; but the said defendants, contrary to equity, have rejected the plaintiff's offers and refuse to release the said lumber and logs from their custody.

TENTH. That the demands made upon the plaintiff by the defendants—a compliance with which demands is made the condition upon which the said logs and lumber may be removed—are unreasonable, excessive and contrary to law, and the refusal upon the part of the defendants to deliver up said logs and lumber to the plaintiff is in violation of law and the legal rights of the said plaintiff.

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The plaintiff, now here renewing its said offers, as mentioned in the last paragraph, to make any reasonable and fair compromise of all controversies relative to the possession of the said logs and lumber, and relative to the submission of any and all legal questions to the court for speedy adjudication, and now further offering to furnish sureties for the payment to the said defendants of all such sums of money as shall be finally determined are due to them in consequence of the capture or taking up of all such logs and lumber, if any, prays equitably relief as follows:

*First.* That The West Branch Lumberman's Exchange be authorized and empowered, by decree of this Court, to proceed peacefully forthwith, by its contractors, agents and employees, in the retaking, gathering and removing, of all such logs and lumber brought down the West Branch of the River Susquehanna by the flood of June, 1889, and stranded or lodged upon shore or island lands in Northumberland county, and all such logs and lumber caught and secured along the



shores of the Susquehanna and its branches, in said county, upon such terms and conditions as the Court may impose.

*Second.* That all controversies and disputes respecting claims for salvage or lien upon logs and lumber be determined after full hearing and upon final decree, and that the said defendants be secured in their respective claims in such manner as to the court may seem meet and just, pending such final settlement.

*Third.* That the defendants be enjoined and restrained from instituting prosecutions, suits or actions of whatsoever nature for or on account of the retaking and removal of the said logs or lumber, and for or on account of any claim thereon by way of lien or for salvage, and for or on account of the necessary entry upon land to retake and remove said logs and lumber; and from any interference with the contractors, agents, or employees, of the said The West Branch Lumberman's Exchange, in the proper, peaceful and orderly removal of said logs and lumber and the retaking of the same.

*Fourth.* That the plaintiff may have costs.

*Fifth.* That the plaintiff may have such other and further relief as equity may require and to the Court may seem meet.

F. COLEMAN,  
President W. B. Lumberman's Exchange.

Attest:

WM. RANDALL PRIOR,

Secretary W. B. Lumberman's Exchange.



LYCOMING COUNTY, ss: .

F. Coleman being duly sworn according to law says that the facts set out in the foregoing Bill are true to the best of his knowledge and belief; and that such matters as are stated upon information he verily believes to be true, and that the plaintiff will be able to prove the same upon hearing.

F. COLEMAN.

Sworn and subscribed before me this 31st day of July,  
1889.

SETH T. McCORMICK,

[Seal.]

Notary Public.

I, HEREBY CERTIFY, that in my opinion The West Branch Lumberman's Exchange has not an adequate legal remedy for the matters complained of above; and there is not sufficient time to print this Bill before hearing.

J. NEVIN HILL,

SUNBURY, July 30, 1889.

Plaintiff's Solicitor.



## APPENDIX.

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### FORM OF POWER OF ATTORNEY.

WILLIAMSPORT, PA., July 31st, 1889.

*To the West Branch Lumberman's Exchange :*

This is to authorize you to gather up, sell, control, manage or dispose of, in such manner as has heretofore or may hereafter be duly authorized and directed by the officers and members of your corporation, all the saw logs and lumber in the Susquehanna River or on the banks thereof, or islands therein, or in the Chesapeake Bay and the shores thereof, and owned by us respectively. And we do hereby severally agree to contribute to all costs, damages paid land owners and others, and expenses of every kind incurred by you, your agents, committees or contractors in and about the premises, in such proportions as our logs and lumber respectively should, upon a *pro rata* adjustment of all such costs, damages, &c., properly bear; such *pro rata* charges against each of us to be fixed by the Exchange. And we authorize and empower you in your name to bring and maintain any action at law or in equity for the recovery of any such logs or lumber or in the prosecution of those who may steal the same or trespass thereon.

(Signed by the log and lumber owners.)

The above and foregoing is a true copy of the original paper executed by the owners.

(Signed,) F. COLEMAN.





THE WEST BRANCH LUMBERMAN'S	}	IN THE COURT OF COMMON
EXCHANGE,		PLEAS OF NORTHUMBER-
<i>vs.</i>		LAND COUNTY.
JOHN ENTERLINE, ET AL.		No. 170.      IN EQUITY.

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In the matter of the application for a special injunction.

BY THE COURT:

This case was heard after notice on bill and injunction affidavits, both parties being present and represented by counsel.

The loss of the complainants is one of the unfortunate consequences of the great and extraordinary flood which occurred in the valleys of the Conemaugh and West Branch Rivers about the first of June last, and which was attended with, by far, the greatest loss of life and destruction of property ever known in the State of Pennsylvania. The controversy in this case is particularly unfortunate just at this time, owing to the state and character of the business effected; and knowing the importance of a speedy disposition of the question involved to all parties concerned, I have endeavored to give the matter as much consideration as I could under the circumstances.

The property about which the dispute arises consists of a large quantity of saw logs and lumber scattered for many miles along low lands and on islands, and is liable any day to be again swept away by another flood. It is also liable to be damaged by the action of the weather. A large num-

ber of laborers are thrown out of employment. Farmers on whose islands and lands this property is thrown, should have it removed, and the poor men who spent their time and labor in taking up logs floating in the river need their pay. These and other considerations should prompt all parties, as well as the Court, in endeavoring to adjust the contention as speedily as possible. As alleged in the plaintiff's bill, before the month of June, 1889, a large number of persons, firms and companies, engaged in lumbering, manufacturing and dealing in timber and lumber in and along the West Branch of the river Susquehanna and its tributaries, were the owners severally of large stores of logs and lumber, the merchandising and trafficking wherein constituted the principle industry of the cities of Williamsport and Lock Haven and of the valley of the West Branch north of the city of Williamsport, giving employment to large numbers of men and keeping in operation large saw mills and manufactories. The logs so in stock were gathered in booms in the West Branch at and above Williamsport, established for that purpose by authority of the law, and there securely held for the use of the individual owners, and, though mingled together known by their respective marks or brands which were duly registered; sawed lumber and lumber prepared for market in stock sawed from registered logs were gathered, stored and piled in lumber yards at and about the mills and factories of the respective owners. In consequence of the extraordinary rainfalls and tempests on or about the first day of June, 1889, the waters of the West Branch and its tributary streams increased and swelled beyond the high water mark so that the West Branch of the Susquehanna river at the cities of Williamsport and Lock Haven reached a height never before attained; and by reason of the great height of the said waters and the great velocity and pressure thereof,



the said booms securing the logs aforesaid were forced open and broken, and the said lumber yards were inundated so that the lumber prepared for market was lifted up and borne upon the current, and thereupon the whole of the said stocks of logs and lumber were carried away upon the water of the West Branch and the main river Susquehanna *in one confused mass*. There thus passed out of the immediate possession and control of the said owners about two hundred and fifty millions feet of lumber in the log, and about fifty millions of feet of sawed and merchantable lumber, valued in all at about four million of dollars, and the said valuable stocks were mixed, scattered and strewn along the shores and islands of the said West Branch and the main river Susquehanna from the city of Williamsport to the Chesapeake Bay, a distance of about 180 miles. In the passage of the said mass of logs and lumber upon the flood through the County of Northumberland large quantities thereof, (about forty millions of feet), were stranded and lodged upon lands adjacent to the said river and upon islands therein, and some logs and lumber (about two millions of feet) were captured by men and boys who secured the same along the shore.

The defendants are the persons who own or occupy the shore, islands and lands whereon said logs and lumber were stranded, and also persons who captured and secured logs and lumber as aforesaid.

The owners of the said logs and lumber, in order that they might save as much out of the wreck as possible, and that said property might be taken, gathered up, sold and marketed, authorized and empowered, by writings duly executed by them severally, and delivered to, the plaintiff to gather up, sell, control, manage and dispose of in such manner as may be authorized and directed by the officers of the corpo-

ration all the logs and lumber in the Susquehanna River or on the banks thereof, or islands therein, or in the Chesapeake Bay and the shores thereof, and owned by them respectively, and authorized and empowered the said plaintiffs in its own name to bring and maintain any action at law or equity for the recovery of any such logs or lumber, or in the prosecution of those who may steal the same or trespass thereon. In pursuance of said trust, power and authority, the plaintiff proceeded as speedily as possible and entered into large and important contracts for the gathering of said lumber and logs and for their transportation to Williamsport, and at great expense and at great labor secured and put upon and along the river sufficient forces of men and sufficient machinery to insure the speedy return of all such logs and lumber to Williamsport.

It is alleged that the defendants (about 175 in number) upon one pretext and another have retained the said logs and lumber upon their grounds where the same stranded and were lodged, or upon the public shores of the river and in the waters thereof where they have secured the same, and have refused to permit the agents and employees of the plaintiff to remove the same, or to enter upon their lands to retake the same, and have threatened the plaintiff's agents and employees with legal processes and arrests and with bodily injuries should they exercise the right to retake and remove the said lumber and logs, and that the plaintiff is vexed and annoyed with great and unnecessary expenses, costs and damages, and if driven to seek legal remedies will suffer irreparable loss and injurious delay by multiplicity of suits &c.

It is further alleged that the plaintiff has made fair offers to the defendants to compromise all controversies and dis-



putes, agreeing to make money payments in order that the said work should not be delayed, or to give bonds with sufficient sureties upon such reasonable conditions as the defendants should propose, to secure to them the payment of any judgment or judgments they might severally recover at law respecting the stranding or capture of said logs and lumber, or to make a case or cases stated for the opinion of the Court as to the amount or amounts which the plaintiff would be liable to pay, if anything, to said defendants respecting the possession of said logs and lumber or the capture or taking up of the same, but the said defendants, contrary to equity, have rejected said offers and refused to release the same from their custody, and that the demands made upon the plaintiff by the defendants are unreasonable, excessive and contrary to law, and the refusal to deliver up the said logs and lumber to the plaintiff is in violation of the law and the legal rights of the plaintiff. The prayers of the bill are as follows :

“FIRST. That the West Branch Lumberman’s Exchange be authorized and empowered, by the decree of this Court, to proceed peacefully forthwith, by its contractors, agents and employees, in the retaking, gathering and removing, of all such logs and lumber brought down the West Branch of the River Susquehanna by the flood of June, 1889, and stranded or lodged upon shore or island lands in Northumberland county, and all such logs and lumber caught and secured along the shores of the Susquehanna and its branches, in said county, upon such terms and conditions as the Court may impose.

SECOND. That all controversies and disputes respecting claims for salvage or lien upon the said logs and lumber be determined after full hearing and upon final decree, and that the said defendants be secured in their respective claims in such manner as to the court may seem meet and just, pending such final settlement.

THIRD. That the defendants be enjoined and restrained from instituting prosecutions, suits or actions of whatever na-

ture for or on account of the mere retaking and removal of the said logs and lumber, and for or on account of any claim thereon by way of lien or salvage, and for or on account of the necessary entry upon land to retake and remove said logs and lumber; and from any interference with the contractors, agents, or employees, of the said The West Branch Lumberman's Exchange, in the proper, peaceful and orderly removal of said logs and lumber and the retaining of the same.

FOURTH. That the plaintiff may have costs.

FIFTH. That the plaintiff may have such other and further relief as equity may require and to the Court may seem meet."

At the argument it was admitted by some of the counsel that the principal contention between the parties is as to the amount, if anything, the respective defendants are entitled to receive from the owners of the logs and lumber, for catching or taking up the same. The defendants do not claim ownership or dispute the title of the owners. It was argued with some force that the plaintiff, the West Branch Lumberman's Exchange, has shown no title to the logs or lumber, and cannot maintain an action at law or equity for the same; but the circumstances and exigency of the case appeal so strongly to the conscience of the Court for speedy relief, that no merely technical objections should be allowed to prevail. Certainly the owners, after having empowered the plaintiff to take possession, sell and dispose of the property and to sue for the same in its own name would forever be stopped from making any further claim.

The Court is therefore disposed to treat the plaintiff as a trustee, who may maintain a bill in equity to restrain all parties from interfering with the proper and lawful execution of the trust. It has also been argued that the defendants' claims being wholly distinct they cannot be pro-



ceeded against jointly. It must be admitted that there is great force in this position, and under ordinary circumstances would be sustained. No Pennsylvania decisions have been cited, but the text books are full of English and American cases, and lay down as an elementary principle that an injunction will be decreed where the same question is likely to be contested in a multiplicity of suits, or where there is one general right to be established against a great number of persons. 2 Daniel's Chancery Pleading and Practice, 1682. Pomeroy's Equity Jurisprudence, Vol. 1, Sec. 256, page 269, *ibid* Sec. 268, page 269-293. On page 293, Sec. 269, Mr. Pomeroy says: "notwithstanding the positive denials by some American courts, the weight of authority is simply overwhelming that the jurisdiction may and should be exercised either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no 'common title', nor 'community of right' or of 'interest in the subject-matter' among these individuals, but where there is and because there is merely a community of interest among them *in the questions of law and fact* involved in the general controversy, or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body. In a majority of the decided cases, this community of interest in the questions at issue and in the kind of relief sought has originated from the fact that the separate claims of all the individuals composing the body arose by means of the same unauthorized, unlawful, or illegal act or proceeding. Even this external feature of unity, however, has not always existed, and is not deemed essential. Courts of the highest standing and ability have repeatedly interfered and exercised this jurisdiction, where the individual claims were not only legally separate, but were separate in



time and each arose from an entirely separate and distinct transaction, simply because there was a community of interest among all the claimants in the question at issue and in the remedy.”

In the present case it is clear that the same question is likely to be contested, or one general right to be established in one hundred and seventy-five suits in this County, and, perhaps ten times as many in the Counties through which the Susquehanna river and its branches pass. I, therefore, see no good reason why the principle should not be invoked, especially under the extreme urgency of the occasion, or necessities of the case, and the prayer of the plaintiff will not be denied on the ground that the different defendants’ claims are distinct, the Court taking care that the rights of each of the defendants are fully considered and protected according to the facts and circumstances of their respective claims or defences. The same question as to the amount of compensation the defendants are entitled to receive per log or thousand feet of lumber, if anything, and the one general right of the owners of property escaped from their possession by the act of God, to retake the same upon the land of another, is to be established against a great number of persons. Why not, therefore, bring them all in and have the question and right established in one suit. As I before remarked, by delay much of the property is liable to be damaged or may escape any day, a great industry stops, many men thrown out of employment, and the life’s earnings of many industrious and enterprising citizens lost. As was remarked by counsel for most of the defendants at the argument, the principal question in the case is as to the amount of salvage or compensation defendants are entitled to receive from the owners for catching or taking up their logs and lumber.

Before referring to the several Acts of Assembly relating to this question I may as well refer to what has been decided by the Supreme Court of this State, in regard to property escaped from the owners by flood and stranded upon the property of another. In the case of *Foster vs. Juniata Bridge Co.*, 16 Pa., 393, it was held that "Property carried adrift continued to be the property of him who owned it at the time of the flood. When stranded, the owner has the right to enter on the land and remove it, but he is not bound to do so, and may abandon it without incurring responsibility for injury done by it."

In the same case it was also decided that "the owner of the land on which property is stranded, after notice to its owner to remove it, and neglect or refusal to do so, may disincumber his property of it by casting it back into the stream; but he has no right to *appropriate it to his own use*. He may remove it at his own expense; but the refusal of the owner of the property to remove it will not divest the right of the latter in it, or bar his entry to reclaim it. He may resume the ownership after abandonment. *The owner of the land has no lien on property cast on it by drift.*"

In the case of *Hynicka et al. vs. Smith*, 26 Pa., 499, it was held that "To enable a salvor under the Act of 1812 to retain possession of lumber taken up adrift in the Susquehanna, against the owner, there must be a strict compliance with the provisions of the Act. If an insufficient and defective list of the lumber saved be filed before the Justice it can not be amended after the owner has exercised his right of recaption."

In that case, Lewis C. J., delivering the opinion of the Supreme Court, said, "Any person who takes up and secures lumber adrift on the waters of the Susquehanna river, has a



right to retain possession of the same until the owner pays the compensation prescribed by the Act of 20th March, 1812. But the right to retain possession, against the claim of the owner, is derived altogether from the Act of Assembly, and can not exist without a strict compliance with its provisions. The person taking up the lumber is bound, *within 30 days thereafter*, to lodge 'a list of the same, by him subscribed', with the nearest Justice of the Peace of the town or township where the lumber was taken up, specifying 'the number, quality, and quantity of the logs, shingle-bolts, boards, shingles, or other lumber, with the marks on the same.' Although the person who takes up the lumber is allowed 30 days to file his list with the Justice, he may do it as much sooner as he thinks proper; and when he does so, his title to retain must rest on the foundation so prepared, unless the Justice, on cause shown, permits the list to be amended. This ought not to be permitted if the owner, acting on a false or defective description, had, in the meantime, exercised his right of recaption. If the person taking up the lumber fails to file a list of it within 30 days, *his title is gone*, and in retaining the property from the lawful owner, he, like any other person who abuses an authority in law, becomes a wrong doer *ab initio*. \* \* \* \* \* If the salvor will not furnish the evidence which the law prescribes, to charge him with the custody of the property, *he has no right to retain it, and can claim no compensation under the Act for taking it up.*"

In the present case, John Byers, John Fry, George P. Fisher, Mrs. Susan Fisher, Geo. W. Sterner, Geo. Hoover and Abel Herrold, seven of the defendants, produced at the hearing affidavits that they had complied with the provisions of the Act of Assembly and that the plaintiff or owners of the property had not paid or offered to pay the salvage



money to them. These persons are owners, lessees and occupants of the land or islands on which the property, logs and lumber, stranded, and they claim that they took it up under and by virtue of the provisions of the Act of 20th of March, 1812. Their lands and islands are in the main river below the town of Northumberland, and if they were entitled to take up the property so lodged or stranded by virtue of the Act of Assembly they are entitled to retain possession of the same until the owners pay or tender the amount of compensation prescribed by law. Hynicha et al. vs. Smith, *supra*. None of the other defendants produced affidavits or evidence of their having complied with the provisions of the Act of Assembly by filing within 30 days with the nearest Justice of the Peace a description of the property, although they were notified of the plaintiff's intended application for an injunction.

Perhaps the time was too short, and they will have an opportunity of producing such affidavits or showing compliance with the Act at a hearing on a rule to show cause why the injunction should not be continued.

As to the said defendants who alleged that they have complied with the provision of the Act it now becomes necessary to determine whether they were entitled to take up the property stranded upon their lands or islands so as to entitle them to compensation, and if so, how much. And in passing, I will also endeavor to determine what compensation, if any, the other defendants are entitled to receive in case it is hereafter made to appear that they have complied with the provisions of the Act. The Act of 20th of March, 1812, 3 Sm., 335, is the first Act on the subject, and is entitled "An Act to regulate the taking up of *lumber*, in the Rivers Susquehanna and Lehigh and their branches." I can not, nor

is it necessary, to embody the whole of this and the other Acts in this opinion, but will only refer to such parts of them or their substance as seem to be necessary in order to determine the questions that arise in the case. The second section of the Act enacts, "That any person or persons taking up and securing any logs, boards, shingle bolts, shingles, or any other lumber, upon any of the waters aforesaid, shall be entitled to receive from the owners thereof the sum of six cents for every log, the sum of one cent for every shingle bolt, provided the number taken up shall exceed fifty, the sum of fifteen cents for every hundred feet of boards, the sum of six cents for every hundred shingles; as also the costs of advertising the same, upon payment of which sum or sums, or tender of payment by the owner of such lumber to the person or persons taking up the same, he shall forthwith deliver all such lumber to the said owner; and upon neglect or refusal to deliver the same, he shall forfeit and pay to the owner thereof treble the value of the said lumber, to be recovered as debts of equal amount are by law recoverable in this Commonwealth."

The third section prescribes the penalty of double the value of the lumber and the sum of twenty dollars against any person or persons who shall neglect to lodge a list containing a description of the quality, quantity and marks, of such lumber with the nearest Justice of the Peace. The next Act on the subject of compensation is the Act of 8th of April, 1855, P. L. 1855, p. 529; the first section of which enacts as follows: "That any person or persons who shall take up any boards or lumber of any kind, logs, timber, shingles or shingle bolts found floating in the river Susquehanna, or either of its branches, shall, in lieu of the compensation now by law allowed, be entitled to a reasonable



compensation for all necessary services and expenses in taking up and securing the same, and for advertising it in the manner now by law prescribed.”

The second section prescribed that proceedings were to be had in case the parties were unable to agree upon the amount of compensation to be paid; that is, the lumber, logs, &c., were to be delivered to the owner, but he or his agents were liable to arrest upon a *capias*.

The third section provides for a sale in case the property shall not be claimed within three months of the time it was taken up.

The next and last Act now in force fixing the compensation to be paid for taking up logs and lumber floating down the river below the Susquehanna boom (at Williamsport) where they are not intentionally floated or driven, is the Act of 10th of April, 1862, P. L. 1862 page 383.

The first section of that Act authorizes any person or persons engaged in lumbering upon the West Branch of the Susquehanna or any of its tributaries, to adopt one mark or designation wherewith to stamp or mark all logs, lumber, &c., put, or intended to be put in the said stream or its tributaries, to be run, driven or floated to any mill, booms or markets anywhere, *at or above the Susquehanna boom at Williamsport*, and to file the same in the Prothonotary's office and to receive a certificate thereof, which certificate shall be *prima facie* evidence of the right of property in the said logs, lumber, &c.

The second section, after enacting, that from and after the passage of the Act it shall not be lawful for any person or persons without authority from the owner or owners to catch, stop, take up or detain any lumber of any of the kinds



mentioned in the first section (which includes logs and other lumber) excepting masts, spars, square timber and boards which shall be floating in any of the streams or main river *above* said Susquehanna boom (at Williamsport), mentioned in said section, having thereon any duly registered mark, under any pretence whatever, provides as follows: "*Provided, that this section shall not apply to any incorporated boom company, or to lumber of any of the kinds aforesaid, taken up below said Susquehanna boom. And for the purpose of encouraging persons to catch, take up, and secure logs and lumber floating down the Susquehanna river below the Susquehanna booms, it shall and may be lawful for any person or persons so taking up and securing any of the said kinds of lumber, so found floating down the said river, below said booms to charge and receive from the owner or owners of said lumber, the sum of 50 cents per thousand feet, board measure, and to have a lien upon the same until payment is made or tendered by the owner or his agent; and for all such lumber, as aforesaid, taken up below the Columbia bridge, 75 cents per thousand feet, board measure.*"

This as before remarked, is the last Act on the subject of compensation to be charged and received from the owners of logs and lumber floating down the Susquehanna river below the Susquehanna booms at Williamsport except where the same are floated or driven *intentionally*, unless rafted and under the pilotage and control of men between the town of Northumberland and the line of the State of Maryland. All previous Acts *so far as they relate to compensation*, are repealed by implication arising from the passage of this latter Act. The latter Act prescribing the compensation to be paid must be the law in relation thereto notwithstanding there is no provision expressly repealing the former Act.

That the words or terms of this Act fixing the price at 50 cents per thousand feet board measure includes logs, is plain from the words used, "For the purpose of encouraging persons to catch, take up and secure *logs*, and lumber floating down the Susquehanna River below the Susquehanna boom, it shall and may be lawful for any person or persons so taking up and securing *any of the said kinds of lumber*, so found floating down the said river below said booms, to charge and receive, &c."

The title of the Act of 20th of March, 1812, and all the words of the Act itself, as well as the words of all subsequent Acts relating to the same subject, show that the legislature invariably employed the words "the said lumber," "owner of such lumber," "description of the quantity, quality and marks of such lumber" so as to necessarily include logs. "It is an established rule in the exposition of statutes that the intention of the law giver is to be deduced from a view of the whole, and every part of the statute, taken and compared together. The real intention when accurately ascertained will always prevail over the literal sense of the term." 1 Kent, 462.

One of the principal contentions in the present case arises upon a construction put upon the Act of 11th of Decamber, 1866, P. L. of 1867, page 1365. The title of the Act is as follows: "An Act declaratory of the law relating to taking up lumber, and prohibiting the floating of loose saw logs in the Susquehanna river, between the town of Northumberland and the line of the State of Maryland."

It is plain from the reading of the whole Act that the object of this law was to prevent the intentional floating or driving of logs below the town of Northumberland, and that



it does not apply to the case of logs not intentionally floated and which had accidentally escaped from the owners by high and extraordinary floods.

The first clause of the first section of the Act, declares it to be the true intent and meaning of the first section of the Act of the 20th of March, 1812, that any saw logs may be taken up under the provisions of said section, whether the same be put into the said stream intentionally or otherwise, and whether the same be floated intentionally or otherwise; and what follows shows conclusively that the true intent and meaning of the Act (of 11th of December, 1866,) was to prevent floating or driving saw logs below Northumberland unless rafted and under the pilotage and control of men, and it provides that the persons taking up any of the said logs, *so floating*, shall be entitled to receive from the owners thereof 50 cents for each log, before delivering up the same." This Act was before the Supreme Court in the case of Craig and Blanchard vs. Kline et al., 65 Pa., 399, and was fully discussed by Agnew, C. J., on page 413. He says: "Now it is very clear that the mere fact that a man's property is found floating down the stream, is not *ipso facto* a ground of forfeiture, so as to deprive him of title. *It is the intentional or voluntary act of floating, directing or authorizing to be floated, which the law prohibits.* For ought the captor or the public may know the logs might have been carried off by a flood, or by the illegal acts of trespassers."

It is clear, therefore, if anything can be clear, that the law of 1866 giving to captors fifty cents a log does not apply to logs or lumber carried off by high water, and which were not being intentionally or voluntarily floated or driven.

It is also expressly decided in that case, that the Act of 20th of March, 1812, directing that the captor of logs shall



lodge a list within 30 days with the nearest Justice is not repealed. See also the case of *Wendt vs. Craig and Blanchard*, 67 Pa., 424.

As to the defendants who took up the logs lying on their islands, it seems to me that they had a clear right to do so upon complying with the provisions of the Acts of Assembly. The Act of 20th of April, 1853, P. L. 646, only employs the word or term "lumber," but, as before stated, this may mean logs in the sense it is used by the legislature. In the case of *Craig and Blanchard vs. Kline et al.*, 65 Pa., 415, the Supreme Court said: "The defendants had a right to take up the logs lying on the islands under the Acts of 1812, 1853 and 1855 as explained in the first section of the Act of 1866, but having failed to comply with their provisions as to the mode of taking up the logs the plaintiffs were entitled to recover \* \* \*."

The Act of 1862 only repeals the Acts of 1812, 1853 and 1855 so far as relates to any of the several kinds of lumber mentioned in the first section of the Act, *in and along the streams and their tributaries mentioned in said first section*. The repeal does not extend to lumber adrift and taken up below the Susquehanna boom. The repeal of the proviso in the second section of the Act of 11th of December, 1866, by the Act of 13th of April, 1868, P. L. 1868, page 92, does not effect the construction given to that Act. Since the repeal, saw logs can not be intentionally floated or driven below Northumberland without being rafted or under the control of men, although, by reason of high water or any other casualty, they may have been swept out of the West Branch and Susquehanna booms. That I take to be the only effect of the repeal of the proviso.

On account of the confused state in which the logs and

lumber are piled up on the lands of some of the defendants, it would be almost impossible for any one of the owners to replevy such as belonged to him. He could not tell, without separating them, which of them belonged to him, and could not know in which amount to give a bond. To separate them would be expensive and the work of months, and a damage to the land owners. Under such circumstances it can hardly be said that there is an adequate remedy at law.

In my opinion it would be for the interest of all persons engaged in the lumber business, who are liable every day to have their property swept away by high water, to deal liberally with those who toil and risk their lives in taking up and securing the same. It is true, no one is bound to take up logs or lumber floating in the river, and if he does, he generally does it without the request of the owner, and his service is voluntary and gratuitous. He cannot recover for such service unless he can show an act of the legislature giving him compensation and with that he must be content be it much or little. In every instance, however, when property comes adrift down the river men are quick to set to work and secure all they can, believing that the owners will be just and pay them what is right. They are often obliged to purchase ropes and be at other expense and they should be fairly and justly dealt with. The owners of the property sustain loss it is true but often owners of lands on which the same is lodged are also greatly damaged. If, therefore, in every case, both parties would meet with the proper spirit, with a determination to do unto each other as they would be done by, and so endeavor to adjust their differences by doing what is right and just under the circumstances of each case doubtless it would be for the interests of all concerned in the end. In some cases the amount of compensation fixed by law might be sufficient and in others



it might not. Fifty cents per thousand feet board measure for logs, would, perhaps, average about seven cents per log. In some cases a land owner, having a large number of logs on his land might consider himself well paid at that rate, whilst a captor, who toils with a boat and risks his life in catching logs in the middle of a high and turbulent stream would scarcely consider himself half paid. That is a matter however, for the parties, and not the Court to consider. When parties engage in law suits the Court can only administer the remedy the law provides.

Having shown that any person who takes up and secures logs and lumber adrift on the waters of the Susquehanna river, has a right to retain possession of the same until the owner pays or tenders the compensation prescribed by law, provided such person has complied with its provisions, I am of opinion that I cannot enjoin those persons who have shown that within 30 days they have lodged a list of the logs and lumber with the nearest Justice of the Peace of the town or township as required by the Act of 20th of March, 1812, and that the owners have not paid or tendered the prescribed compensation. As to such persons the application for a special injunction must be refused until the owners pay or tender the compensation. Just how this is to be done, on account of the large number of logs piled upon each other to a great height on some of the lands and islands, and doubtless mixed with logs not belonging to the plaintiff and which the plaintiff has no right to take, I am not able to say. In order to pay for the logs belonging to the plaintiff at the rate of 50 cents per thousand feet, board measure, they must of course, be scaled, and the number of feet ascertained in some way. This may be troublesome and attended with expense and delay, but the situation must be accepted and the parties must do the best they can.

Having declared that logs and lumber carried adrift by high flood continue to be the property of him who owned them at the time of the flood, and that when stranded, the owner has the right to enter on the land and remove them, or take them wherever found, unless they have been taken up by some person who either caught them whilst floating in the stream or found them lying upon his land or island, and within thirty days complied with the provision of the Act of Assembly by lodging a list of the same by him subscribed, with the nearest justice of the peace of the town or township and advertising the same as required by the Act; and having also decided that the amount of compensation to be charged and received from the owner by persons taking up and securing the said logs and lumber found floating down the Susquehanna river below the Susquehanna boom at Williamsport (including logs and lumber lodged on islands and so taken up by the owners of said islands) is the sum of 50 cents per thousand feet, board measure, and for all such lumber, as aforesaid, taken up below the Columbia bridge, 75 cents per thousand feet, board measure, unless the said logs were being intentionally or voluntarily floated or driven, without being rafted and under the pilotage and control of men, and taken up when so floated between the town of Northumberland and the line of the State of Maryland, in which case the person or persons taking up and securing saw logs, so floating, is entitled to receive from the owners thereof, 50 cents for each log, before delivering up the same, I now proceed to make a decree.

And now, to wit: August 8th, 1889, the application of the plaintiff for a special injunction as against John Buyers, Able Herrold, George Hoover, Geo. W. Sterner, Carry A. Barrett, Geo. P. Fisher, Susan Fisher and John Fry is refused, without prejudice however; and it is ordered that the plain-



tiff may renew the application against the said above named defendants, or any of them, at any time in case, after the plaintiff or its agents offers to go upon the premises of the said defendants, or any of them, where the logs and lumber are found lying and to have them scaled by a competent and impartial person in the presence of the defendant or his or her agent, and to pay for the said logs and lumber before they are taken away at the rate of 50 cents a thousand feet, board measure, and the said defendants, or any of them, refuses the same.

Same day, a special injunction is awarded against all the other defendants to enjoin and restrain them and each of them from any interference with the contractors, agents, or employees, of the said The West Branch Lumberman's Exchange, in a proper, peaceful and orderly removal of the said logs and lumber belonging to the said The West Branch Lumberman's Exchange and retaking the same.

The plaintiff to give a bond with sufficient sureties to be approved by the Court or Judge in the sum of thirty thousand dollars conditioned to indemnify the defendants, and each, and every of them, from all damages that may be sustained by them, or each, or either, or any of them by reason, of such injunction.

Same day, a rule is granted on the defendants to show cause why the said injunction should not be continued, returnable on Wednesday the 14th day of August, A. D. 1889, at two o'clock, P. M.

BY THE COURT.

WM. M. ROCKEFELLER,

President Judge.

Hon. H. C. McCormick and J. Nevin Hill, Esq., for complainant; Wolfe & Leiser, Chas. Hower, Esq., W. A. Sober, Esq., C. R. Savidge, Esq., and others, for defendants.

